themselves the opportunity to disagree if that decision were made by an elected representative? The difference is they can throw the rascal out and we are sometimes perceived as the rascal if they do not like the decisions made, but they cannot vote against a judge, because judges are not elected. They serve for a lifetime on the Federal bench.

The increasing politicization of the judicial decisionmaking process at the highest levels of our judiciary has bred a lack of respect for some of the people who wear the robe. That is a national tragedy.

Finally, I don't know if there is a cause-and-effect connection, but we have seen some recent episodes of courthouse violence in this country—certainly nothing new; we seem to have run through a spate of courthouse violence recently that has been on the news. I wonder whether there may be some connection between the perception in some quarters on some occasions where judges are making political decisions yet are unaccountable to the public, that it builds and builds to the point where some people engage in violence, certainly without any justification, but that is a concern I have that I wanted to share.

We all are students of history in this Senate, we all have been elected to other bodies and other offices, and we are all familiar with the founding documents, the Declaration of Independence, the Constitution itself. We are familiar with the Federalist Papers that were written in an effort to get the Constitution ratified in New York State. Alexander Hamilton, apropos of what I will talk about, authored a series of essays in the Federalist Papers that opine that the judicial branch would be what he called the ''least dangerous branch of government.'' He pointed out that the judiciary lacked the power of the executive branch, the White House, for example, in the Federal Government and the political passions of the legislature. In other words, the Congress. Its sole purpose—that is, the Federal judiciary's sole purpose—was to objectively interpret and apply the laws of the land and in such a role its job would be limited.

Let me explain perhaps in greater detail why I take my colleagues' time to criticize some of the decisionmaking being made by some Federal courts in some cases. This is not a blanket condemnation. I hope I have made it clear I respect the men and women who wear the robe, but having been a judge myself I can state that part of the job of a judge is to criticize the reasoning and the justification for a particular judgment. I certainly did that daily as a state supreme court justice. And I might add that people felt free to criticize my decisions, my reasoning and justification for the judgments I would render. That is part of the give and take that goes into this. I make clear my respect generally for the Federal judiciary, including the U.S. Supreme Court.

I am troubled when I read decisions such as Roper v. Simmons. This is a recent decision from March 1, 2005. Let me state what that case was about. This was a case involving Christopher Simmons. Christopher Simmons was seven months shy of his 18th birthday when he murdered Shirley Crook. This is a murder he planned to commit. Before committing the crime, this 17-year-old who was 7 months shy of his 18th birthday, encouraged his friends to join him, assuring them that they could ''get away with it,'' because they were minors. Christopher Simmons and his cohorts broke into the home of an innocent woman, bound her with duct tape and electrical wire, and then threw her off a bridge, alive and conscious, resulting in her subsequent death.

Those facts led a jury in Missouri, using the law in Missouri that the people of Missouri had chosen for themselves through their elected representatives, to convict him of capital murder and to sentence him to death.

Well, this 17-year-old boy, or young man I guess is what I would call him, Christopher Simmons, challenged that jury verdict and that conviction all the way through the State courts of Missouri and all the way to the U.S. Supreme Court. And the United States Supreme Court, on March 1, 2005, held that Christopher Simmons or any other person in the United States of America who is under the age of 18 who commits such a heinous and premeditated and calculated murder cannot be given the death penalty because it violates the U.S. Constitution.

In so holding, the U.S. Supreme Court said: We are no longer going to leave this in the hands of jurors. We do not trust jurors. We are no longer going to leave this up to the elected representatives of the people of the respective States, even though 20 States, including Missouri, have the possibility at least of the death penalty being assessed in the most aggravated types of cases, involving the most heinous crimes, against someone who is not yet 18.

This is how the Court decided to do that. First, it might be of interest to my colleagues that 15 years earlier the same U.S. Supreme Court, sitting in Washington, across the street from this Capitol where we are standing today, held just the opposite. Fifteen years ago, the U.S. Supreme Court held that under appropriate circumstances, given the proper safeguards, in the worst cases involving the most depraved and premeditated conduct, a jury could constitutionally convict someone of capital murder and sentence them to the death penalty. But 15 years later, on March 1, they said what was constitutional the day before was no longer constitutional, wiping 20 States' laws off the books and reversing this death penalty conviction for Christopher Simmons.

What I want to focus on now is the reasoning that Justice Anthony Kennedy, writing for the U.S. Supreme Court, in a 5-to-4 decision, used to reach that conclusion.

First, Justice Kennedy adopted a test for determining whether this death penalty conviction was constitutional. This ought to give you some indication of the problems we have with the Supreme Court as a policymaker with no fixed standards or objective standards by which to determine its decisions to make its judgments. The Court embraced a test that it had adopted earlier referring to the ''evolving standards of decency that mark the progress of a maturing society.'' Let me repeat that. The test they used was the ''evolving standards of decency that mark the progress of a maturing society.''

I would think any person of reasonable intelligence, listening to what I am saying, would say: What was that? How do you determine those ''evolving standards''? And if they are one way on one day, how do they evolve to be something different the next day? And what is a ''maturing society''? How do we determine whether society has matured? I think people would be justified in asking: Isn't that fancy window dressing for a preordained conclusion? I will let them decide.

Well, it does not get much better because then the Court, in order to determine whether the facts met that standard, such as that this death penalty could not stand, or these laws in 20 States cannot stand, looked to what they called an ''emerging consensus.'' Well, any student of high school civics knows we have a Federal system, and the national Government does not dictate to the State governments all aspects of criminal law. In fact, most criminal law is decided in State courts in the first place.

Nevertheless, the Supreme Court of the United States, in a 5-to-4 decision, looked for an ''emerging consensus'' and in the process wiped 20 States' laws off the books. I will not go into the details of how they found a consensus, but suffice it to say it ought to be that in a nation comprised of 50 separate sovereign State governments, where 20 States disagree with the Court on its decision that wipes those 20 States' courts laws off the books, it can hardly be called a consensus, if language is to have any meaning.

Secondly, the Court said: We will also look to our own decisions, our own judgment over the propriety of this law. In other words, they are going to decide because they can, because basically their decisions are not appealable, and there is nowhere else to go if they decide this law is unconstitutional. The American people, the people of Missouri, the people who support, under limited circumstances, under appropriate checks and balances, the death penalty for people who commit heinous crimes under the age of 18 are simply out of luck; this is the end of the line.

Well, finally—and this is the part I want to conclude on and speak on for a